ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE
April 5, 2022
3:40 p.m.

DRAFT

MEMBERS PRESENT

Senator Mike Shower, Chair
Senator Lora Reinbold, Vice Chair
Senator Mia Costello
Senator Roger Holland

MEMBERS ABSENT

Senator Scott Kawasaki

COMMITTEE CALENDAR

SENATE BILL NO. 188
"An Act relating to criminal law and procedure; relating to a petition for a change of name for certain persons; relating to procedures for bail; relating to consecutive sentencing for violation of condition of release; relating to the duty to register as a sex offender; amending Rules 6(r) and 47, Alaska Rules of Criminal Procedure; amending Rule 12, Alaska Delinquency Rules; amending Rule 84, Alaska Rules of Civil Procedure; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 221
"An Act relating to appropriations of federal receipts; and relating to an increase of an appropriation based on additional federal receipts."

- HEARD & HELD

SENATE BILL NO. 194
"An Act relating to electronic identification cards; relating to electronic drivers' licenses and permits; relating to motor vehicle liability insurance; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 188
SHORT TITLE: CRIM PROCEDURE; CHANGE OF NAME
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/15/22	(S)	READ THE FIRST TIME - REFERRALS
02/15/22	(S)	STA, JUD
03/31/22	(S)	STA AT 3:30 PM BUTROVICH 205
03/31/22	(S)	Heard & Held
03/31/22	(S)	MINUTE(STA)
04/05/22	(S)	STA AT 3:30 PM BUTROVICH 205

BILL: SB 221
SHORT TITLE: CHANGING RPL PROCESS
SPONSOR(s): WIELECHOWSKI

02/22/22	(S)	READ THE FIRST TIME - REFERRALS
02/22/22	(S)	STA, FIN
04/05/22	(S)	STA AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

JOHN SKIDMORE, Deputy Attorney General
Criminal Division
Department of Law
Anchorage, Alaska
POSITION STATEMENT: Provided supporting testimony on SB 188 on behalf of the administration.

NANCY MEADE, General Counsel
Office of the Administrative Director
Alaska Court System
Anchorage, Alaska
POSITION STATEMENT: Articulated concerns the Court System has with SB 188.

CHRISTINE HUTCHINSON, representing self
Kenai Peninsula, Alaska
POSITION STATEMENT: Testified in opposition to SB 188.

QUEEN A. PARKER, representing self
Sterling, Alaska
POSITION STATEMENT: Recounted the duties of the grand jury during the hearing on SB 188.

MICHAEL GARVEY, Advocacy Director

American Civil Liberties Union of Alaska
Anchorage, Alaska
POSITION STATEMENT: Voiced serious concerns about SB 188 eroding the due process rights of criminal defendants and others who are erroneously convicted of crimes.

JOAN CORR, representing self
Soldotna, Alaska
POSITION STATEMENT: Testified in opposition to SB 188.

MIKE COONS, representing self
Palmer, Alaska
POSITION STATEMENT: Raised concerns about SB 188.

CHARLES MCKEE, representing self
Anchorage, Alaska
POSITION STATEMENT: Testified off topic during the hearing on SB 188.

SENATOR BILL WIELECHOWSKI, Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of SB 221.

SONJA KAWASAKI, Staff
Senator Bill Wielechowski
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Introduced SB 221, version I, and presented the sectional analysis on behalf of the sponsor.

ACTION NARRATIVE

3:40:07 PM
CHAIR MIKE SHOWER called the Senate State Affairs Standing Committee meeting to order at 3:40 p.m. Present at the call to order were Senators Holland, Reinbold, Costello, and Chair Shower.

SB 188-CRIM PROCEDURE; CHANGE OF NAME

3:40:51 PM
CHAIR SHOWER announced the consideration of SENATE BILL NO. 188 "An Act relating to criminal law and procedure; relating to a petition for a change of name for certain persons; relating to procedures for bail; relating to consecutive sentencing for violation of condition of release; relating to the duty to

register as a sex offender; amending Rules 6(r) and 47, Alaska Rules of Criminal Procedure; amending Rule 12, Alaska Delinquency Rules; amending Rule 84, Alaska Rules of Civil Procedure; and providing for an effective date."

3:41:10 PM
JOHN SKIDMORE, Deputy Attorney General, Criminal Division, Department of Law, Anchorage, Alaska, stated that SB 188 does four primary things to protect victims. He described three of the four points.

1) **Name Changes** People under the control of the Department of Corrections (DOC) or that must register as a sex offender are required to notify DOC, the Department of Public Safety (DPS), and the victims of any name changes. This addresses the complaints victims have had that changing one's name can manipulate the system to hide on the sex offender registry or when their status changed in the Department of Corrections. The court also has new standards to evaluate whether or not the name change is appropriate.
2) **Bail** Provisions in the bill about bail seek to address the significant number of defendants who are released pretrial with little or not bail. The problem is that a significant number of defendants who are released on their own recognizance (OR), violate the terms of their bail repeatedly and the courts have not adjusted bail to reflect the additional violations. SB 188 proposes to expand the existing presumption that the defendant poses a danger to the community if they violate conditions of bail. This should suggest to the court that it adjust subsequent bail to reflect the additional violations.
3) **Grand Jury** Mr. Skidmore described the court rule changes as the most important part of the bill. First, hearsay would be allowed at grand jury. This stems from the 2019 case, State v. Powell, in which the court indicated that presenting a recorded video statement of a victim of child sexual abuse to police and investigators was not admissible at grand jury without the child testifying at grand jury as well. The Department of Law and the administration's position on this issue is that the ruling in Powell was fundamentally contrary to the bill that passed in 2005 that allowed hearsay to be presented in those circumstances. In the Powell case the court indicated that it thought the rule change applied to trials and not grand jury because one of the requirements it found was that the victim would be subject to cross

examination and the court found that the victim is never subject to cross examination at grand jury because the defendant's counsel is never present at grand jury. The court further stated that if the legislature had intended to allow hearsay at grand jury, it should have amended the court rules to allow such information at grand jury. SB 188 amends the court rules to allow hearsay at grand jury. This protects victims in any criminal case from being retraumatized. Additionally, this change will help alleviate the significant backlog of cases that resulted when grand jury and trial proceedings were shut down due to the global health pandemic. Research indicates that the federal government and 32 states allow hearsay at grand jury. He highlighted that when the Alaska Constitution was enacted, hearsay was allowed at grand jury, so it is constitutional. In 1973 the Alaska Supreme Court adopted a rule to prohibit certain types of hearsay and SB 188 changes that rule.

4) **Plain-Error Rule** [Mr. Skidmore did not discuss the Plain-Error Rule.]

CHAIR SHOWER listed the individuals who were available to answer questions.

3:49:08 PM

NANCY MEADE, General Counsel, Office of the Administrative Director, Alaska Court System, Anchorage, Alaska, stated that while SB 188 is problematic in a number areas, she would focus on just two. First, the Court System believes it would be very problematic to implement Section 6. The court does not believe it would be more efficient to require the court to issue written findings. She referenced a document in the bill packets that shows that about 20,000 bail orders are issued each year, and each of those would need to have written reasons for each of the findings. The number of bail hearings has also been about 20,000 per year. She directed attention to the blank four-page bail order in the packets to demonstrate that there are dozens of things the court can order by checking different boxes.

MS. MEADE explained that when somebody is arrested and arraigned, the prosecutor typically seeks to have a substantial number of conditions imposed if the defendant is to be released. The defense attorney or public defender will typically want fewer restrictions on the defendant. She said she finds it ironic that SB 188 would require the court to make a written finding for everything that is ordered when it is the prosecutor that is asking for most of the conditions. She maintained that

the reason is generally very obvious when a box is checked. For example, if there is a domestic violence condition that says the defendant shall not return to a specific residence, the reason is clear. The defendant presents a danger to the person at that residence.

MS. MEADE stated that the requirement in Section 6 is unnecessary and it would cripple the Court System. She highlighted that she had yet to submit a fiscal note but it would be shocking, because new judges and clerks would be needed to handle the added work.

3:53:38 PM
MS. MEADE said the Court System's second concern relates to the criminal court rule changes in the bill. She explained that there are rules of procedure that let the attorneys or self-represented persons know how to get the substantive rights the legislature gives them. The 13-member Criminal Rules Committee meets four or five times a year and they are experts in criminal procedure and are well-qualified to talk through any proposed rule changes, such as whether the hearsay rule should be changed as proposed in the bill. She said the technical changes to the rules proposed in Sections 15 and 16 that redefine plain error are difficult to understand and it seems that the Criminal Rules Committee is a more appropriate forum to handle the proposed rule changes than the legislature. She said she did not have a view about whether the court rule changes were a good or bad idea or whether they were constitutional, but she would say that it deserves a lot of attention.

MS. MEADE noted that she also included two Supreme Court cases in the packets that speak to the substance of the hearsay rule and whether it should be allowed at grand jury. Although Mr. Skidmore said it was not a constitutional issue, she said the Wassillie v. State case has pages that analyze the Constitutional Convention minutes and why the grand jury rule is important. It is considered a protection to keep innocent people from being brought to trial. She included the cases to illustrate the complexity of the issue and that it needs to be explored in detail, preferably by people who work with court rules daily.

MS. MEADE suggested that the question about court rule changes could be resolved in another way. She pointed out that the rule changes proposed in the bill were never submitted to the Criminal Rules Committee. Furthermore, there is a fulltime court rules attorney whose job it is to work with the Criminal Rules

Committee to put things in the appropriate format and once a month present to the Supreme Court recommendations and thoughts about rule changes. That did not happen with the rule changes presented in the bill, but it could, she said.

3:58:36 PM
CHAIR SHOWER asked for an explanation of the process for the administration to work with the Criminal Rules Committee on these matters.

MS. MEADE replied it can be very simple because anybody can contact the court rules attorney to suggest or discuss a rule change. Also, the Department of Law has two members on the Criminal Rules Committee who can suggest a rule change at any of the meetings and the court rules attorney will open a file and it will be discuss at subsequent meetings.

CHAIR SHOWER asked if rule changes can happen outside the legislative process.

MS. MEADE answered yes. The Rules of Court are procedural, not substantive, so the Supreme Court adopts them without legislative action.

4:00:13 PM
SENATOR HOLLAND noted that he sees Wassillie v. State in the documents but not the other Supreme Court case.

MS. MEADE said State v. Gieffels is the 1976 case that speaks to the protections the grand jury provides and adopts the Alaska Bar Association (ABA) standards for how prosecutors present cases to grand juries, which is basically the court rule.

CHAIR SHOWER advised that the cases were available on BASIS but were not printed for the bill packets.

SENATOR REINBOLD stated that she always favors efforts to speed up the prosecution of sexual assault cases so perpetrators are put behind bars more quickly. However, she had never seen a bill with so many proposed court rule changes and she would like further explanation of the Criminal Rules Committee and its processes.

4:02:17 PM
MS. MEADE stated that the constitution gives the legislature the right to change court rules with a two-thirds majority vote. That typically happens when the legislature changes a

substantive law that incidentally changes a court rule correlated to that substantive law. That is what needs to be passed by a two-thirds majority vote, and in typically is. What is unusual is to have a bill such as this that directly changes court rules, although it is permitted by the constitution.

MS. MEADE explained that the Criminal Rules Committee is one of nine rule committees that discuss procedural rule changes and make recommendations to the Supreme Court. The Supreme Court appoints the members of these committees according to their expertise. The committees tend to be a well-rounded group of people who discuss whether proposals for a rule change should be recommended to the Supreme Court to ultimately be adopted as a procedural rule.

She noted that a prosecutor is among the members of the Criminal Rules Committee and that attorney might propose this change to the hearsay rule and the committee would talk it over and come up with a recommendation. The court rules attorney then takes that recommendation, as well as any recommendations from the other eight rules committees to the next monthly meeting with the Supreme Court. The attorney briefs the court on what the different rules committees discussed and whether or not they decided to put forward a recommendation or just wanted to highlight a minority view. The Supreme Court then has the chance to adopt any rule changes after it goes through this process.

SENATOR REINBOLD asked if there were members of the administration that could already do this. She also asked if the Criminal Rules Committee process was similar to the process the legislature follows based on *Mason's Manual of Legislative Procedure.*

MS. MEADE replied the rules committees sit around a conference table and discuss things in a less formal, more conversational way than the legislature does.

SENATOR REINBOLD restated her question.

4:06:34 PM
MS. MEADE said two Department of Law attorneys and an advocate from the Office of Victims' Rights are members of the committee. She said she wasn't clear what Senator Reinbold meant when she asked if the administration could do this.

SENATOR REINBOLD indicated her question was answered.

CHAIR SHOWER offered his perspective that the question was whether those members had the ability to suggest the changes proposed in the bill and his understanding is that they do.

MS. MEADE said that's correct.

SENATOR REINBOLD said the second point was to compare the court rules to the procedures the legislature follows based on Mason's. It was an effort to draw a parallel between two different branches of government.

CHAIR SHOWER asked Ms. Meade if she would provide the fiscal note because it will factor into the bill's progression.

4:07:55 PM
MS. MEADE said she estimated that the court would need new judges in each of the 10 major courts and each judge with law clerks and staff costs about $700,000 per year. There would also be capital expense because there aren't any courtrooms available for additional judges. The cost would be in the $7 to $10 million range.

CHAIR SHOWER summarized that the estimated recurring cost would be in the $7 to $10 million range and then there would be a one-time capital cost for facilities.

MS. MEADE agreed.

CHAIR SHOWER said he would talk to the members to ask if they wanted anything more formal at this point than the estimate.

He asked Lisa Purinton if she had any comments on the bill.

4:09:15 PM
LISA PURINTON, Chief, Criminal Records and Identification Bureau, Division of Statewide Services, Department of Public Safety, Anchorage, Alaska, said she had nothing to add.

CHAIR SHOWER asked Renee McFarland if she had any comments on the bill.

4:09:31 PM
RENEE MCFARLAND, Deputy Public Defender, Appellate Division, Public Defender Agency, Anchorage, Alaska, said she was available to answer questions but had no comments at this time.

4:10:04 PM

CHAIR SHOWER opened public testimony on SB 188.

4:10:24 PM
CHRISTINE HUTCHINSON, representing self, Kenai Peninsula, Alaska, stated that she felt compelled to point out that a primary function of a grand jury is to protect the people from corrupt elected and appointed officials. She said [Mr. Skidmore] is familiar with the efforts to prevent a grand jury from hearing things it needs to hear to help citizens defend themselves from bureaucracy. She maintained that making hearsay part of the testimony and increasing efficiencies by saving money and time does nothing to restore the pain and suffering of the people when they have no recourse.

MS. HUTCHINSON agreed with Ms. Meade that the proposed changes should have gone to the Criminal Rules Committee so they could be discussed by the people who deal with criminal rules. She stated opposition to SB 188 and suggested scrapping hearsay and creating a grand jury that does what it was originally intended to do, which is to protect the people.

4:13:46 PM
QUEEN A. PARKER, representing self, Sterling, Alaska, recounted the duties of the grand jury during the hearing on SB 188. She stated that the law must apply equally to all people and the evidence of crime and corruption must be seen and investigated by an independent Alaskan grand jury so that those in authority will be held accountable. She cited the right of all Alaskans to report crime to the grand jury and the right of the grand jury to investigate those crimes as guaranteed by art. I, sec. 8 of the state constitution; the duty of inquiry into crimes and general powers under AS 12.40.030; the obligation of a juror to disclose knowledge of crime under AS 12.40.040; jury tampering under AS 11.56.590; the transcript from the Alaska Constitutional Convention that talks about the power of grand juries to inquire into the willful misconduct of public officers; and the Alaska grand jury handbook that clarifies that the statute authorizes a juror to ask the grand jury to investigate a crime that the district attorney has not presented to them.

MS. PARKER concluded, "We want justice and I hope to God that our representatives that are in authority will represent us in these situations."

4:16:11 PM

MICHAEL GARVEY, Advocacy Director, American Civil Liberties Union of Alaska, Anchorage, Alaska, voiced serious concerns about SB 188 eroding the due process rights of criminal defendants and others who are erroneously convicted of crimes. In particular, Sections 15 and 16 would impede correcting errors made during the trial process. He maintained that those sections would change the criminal appeals system by valuing finality of conviction over the fairness of those convictions.

MR. GARVEY emphasized that fairness at trial is a cornerstone of due process, particularly for individuals who do not have the resources to fight unjust convictions. He said reversing errors made during trial is already difficult and SB 188 will make it more so. He pointed out that Section 14 would markedly increase the amount of hearsay allowed at grand jury, which would undercut a grand jury's ability to ask questions and assess the truthfulness of the testimony. Defendants already cannot present evidence at grand jury, and this change would further stack the deck and allow cases to advance when the evidence is questionable. He stated that these provisions and the language that would have reduced the number of unconvicted people who are released on bail before trial, would erode due process rights.

MR. GARVEY stated that supporting victims does not have to come at the expense of due process rights. Giving prosecutors more tools to put people in prison unjustly and undercut defendants' ability to maintain their innocence does not represent this value. For these reasons ACLU Alaska opposes SB 188.

4:18:22 PM
JOAN CORR, representing self, Soldotna, Alaska, stated that it is a travesty to think that hearsay could be allowed as evidence. She maintained that there are likely many examples of this being used against innocent people. She agreed with a previous caller who suggested the committee eliminate all reference to the grand jury from the bill. She concluded, "I want the rights of the grand jury restored instead being told what they can and cannot do."

4:19:55 PM
MIKE COONS, representing self, Palmer, Alaska, thanked Senator Reinbold for her last questions and suggested that the problems with the justice system stem from the fact that "we have a bunch of lawyers that can change rules when it's supposed to be the legislature that changes the rule through legislation and bills." He insinuated that the Criminal Rules Committee was nothing more than an extension of Legislative Council that

"doesn't give a hoot and a holler about what We the People say; it's only what the lawyers say." As much as he does not agree with the ACLU on most matters, he was leaning towards a "No" on SB 188. He described SB 188 as a convoluted mess, which he always opposes.

4:21:42 PM
CHARLES MCKEE, representing self, Anchorage, Alaska, stated that he faxed an application for the permanent fund [dividend]. It had a notary witness and his signature on the bottom to indicate who he is and his lack of confidence in the legislative body and the voting aspect of the Bar Association. He continued to testify off topic including that there was no citation for the reason that he was arrested and booked in the Palmer jail.

4:26:00 PM
CHAIR SHOWER closed public testimony on SB 188.

He asked Mr. Skidmore to provide closing comments.

4:26:22 PM
MR. SKIDMORE stated that the Gieffels and Wassillie cases that Ms. Meade cited are illustrative of why these court rules should change. The Gieffels case was handed down in 1976, three years after the Supreme Court changed the rules to say that hearsay wouldn't be admissible. In that case the defense argued that the indictment should be dismissed because the state had presented hearsay from doctors who were not available to appear in person. Subsequent to that case, the rules were changed to allow telephonic testimony. He restated that Gieffels illustrates that when the courts hand down certain rulings, it is appropriate for the legislature to step in and fix policy issues.

MR. SKIDMORE agreed with Ms. Meade that the Criminal Rules Committee can meet to look at rules. However, he suggested that it was out of the ordinary for the committee to meet and overrule something that the courts had already handed down as case law. Furthermore, he said the committee meets just three or four times a year and takes a very long time to review and talk about rules. He said the legislature is a more efficient process.

MR. SKIDMORE advised that a bill that originally allowed hearsay at grand jury began in the legislature. That was challenged in State v. Powell and an express statement in that case was that if the legislature wants to allow hearsay, it should change

other court rules. That is what SB 188 proposes to do, he said, and Ms. Meade indicated it was appropriate.

MR. SKIDMORE said the administration agrees with the aspect of the Wassillie case that talks about the important role the grand jury plays in the protection of constitutional rights. However, the administration wants it to be in a more logical and commonsense manner that is consistent with what 32 other states and the federal government do by allowing hearsay at grand jury. Alaska grand juries already consider a significant number of types of hearsay, but it still presents challenges and problems that could be easily remedied by what this bill proposes. He recounted the particulars of the case and that the Supreme Court said the case needed to be overturned because a report introduced at grand jury violated a court rule that hearsay was not permitted at that stage. It is that type of inefficiency the bill seeks to address.

4:31:57 PM
MR. SKIDMORE said he appreciates Senator Reinbold's concerns about the number of pages in the bill that address court rules, but he wanted to point out that the result will be to simplify Criminal Rule 6 that addresses grand jury. The other pages address the Plain-Error Rule. He noted that the grand jury decision in the Wassillie case was overturned based on a concept in the Plain-Error Rule. He acknowledged that the Plain-Error Rule is a more complicated rule and he would understand if this committee was more comfortable leaving it to lawyers to sort out. By contrast, he said grand jury is not complicated; it is a simple, common sense solution to make things better for victims and to make the system work more efficiently.

MR. SKIDMORE submitted that SB 188 does not say that grand jury isn't still a protection for the people. All the protections are still present. SB 188 just provides a different way to present evidence, which makes it easier for victims and is consistent with what most other states use.

MR. SKIDMORE said he appreciates the concerns expressed earlier from the Kenai Peninsula. He emphasized that those issues must and will be addressed, but SB 188 was not the right vehicle because that's not what the bill is about.

4:35:34 PM
SENATOR REINBOLD asked 1) if the grand jury is there to protect the people; and 2) if he could give a concise update and what is happening with the grand jury in Kenai.

MR. SKIDMORE confirmed that grand juries are to protect the people. However, that protection is to ensure that the evidence that is reviewed warrants an indictment so the case can go forward to trial. He said he couldn't discuss the ongoing litigation further other than to say that he hopes resolution will be soon.

4:37:10 PM
CHAIR SHOWER found no further questions or comments and stated he would hold SB 188 in committee for future consideration.

SB 221-CHANGING RPL PROCESS

4:37:32 PM
CHAIR SHOWER announced the consideration of SENATE BILL NO. 221 "An Act relating to appropriations of federal receipts; and relating to an increase of an appropriation based on additional federal receipts."

He noted that this was the first hearing and there was a committee substitute (CS) for the committee to consider after the introduction.

4:37:52 PM
SENATOR BILL WIELECHOWSKI, Alaska State Legislature, Juneau, Alaska, sponsor of SB 221, stated that this legislation seeks to change the way appropriations are handled when the legislature is not in session. Art. IX, sec. 13 of the Constitution of the State of Alaska clearly states that the legislature is the appropriating body. However, a statute called the revised program legislative (RPL) delegates the power of appropriation to the executive branch when the legislature is not in session. He suggested that this law is unconstitutional. He reported that a lawsuit on this issue last year went to the superior court but the legislature reconvened before the court ruled on that particular issue.

SENATOR WIELECHOWSKI questioned the wisdom of giving one individual the sole authority to decide where hundreds of millions of dollars should go, particularly with little to no public process or legislative oversight. SB 221 seeks to restore the legislature's constitutional role in budgeting and to streamline the process to address the situation of unexpected revenue.

He summarized that SB 221 is about protecting the budgeting process, restoring balance between the legislative and executive branches, and giving the public more say in how state money is spent.

CHAIR SHOWER asked the members if they had any questions.

4:40:31 PM
SENATOR REINBOLD stated appreciation for the bill and relayed her frustration with the RPL process.

CHAIR SHOWER solicited a motion to adopt the committee substitute (CS) for SB 221.

4:41:13 PM
SENATOR REINBOLD moved to adopt CSSB 221, work order 32-LS1472\I, as the working document.

CHAIR SHOWER objected for discussion purposes.

4:41:43 PM
SENATOR COSTELLO observed that the CS probably will require a title change because it brings up AS 24.05.100 related to special session. She asked the sponsor to respond.

4:42:00 PM
SENATOR WIELECHOWSKI thanked her for pointing that out and acknowledged that a title change may be required. He noted that making the change in committee would require just a majority vote.

SENATOR COSTELLO expressed her preference to ask for a new title so it reflects everything in the bill.

CHAIR SHOWER asked if she wanted to offer the motion.

SENATOR COSTELLO replied not now.

4:42:56 PM
CHAIR SHOWER removed his objection. Finding no further objection, version I was adopted as the working document.

He asked Ms. Kawasaki to introduce the committee substitute.

4:43:32 PM
SONJA KAWASAKI, Staff, Senator Bill Wielechowski, Alaska State Legislature, Juneau, Alaska, introduced SB 221, version I, on

behalf of the sponsor by paraphrasing the sponsor statement for version I that read as follows:

> SB 221 reforms the statutory revised program legislative (RPL) process that arguably render it unconstitutional.
>
> I believe that the current RPL law is unconstitutional both on its face and in practice. The legislature is the constitutionally authorized appropriating body; this means that, under the Alaska Constitution, the legislature possesses both the power and the duty of appropriations. The governor cannot overstep this legislative authority, and the legislature cannot avoid its duty.
>
> Current law unconstitutionally delegates the power and the duty of appropriations to the governor. When the legislature is not meeting in session, AS 37.07.080(h) permits the governor to expend additional revenue received by the State—with the governor acting as the appropriating authority, setting state funding priorities. Facially, the law expressly assigns the governor the ability to determine spending of "federal and other program receipts" when the funds were "not specifically appropriated by the full legislature." These provisions enable impermissible actions; they appear to allow the governor to spend not only federal dollars but also, potentially, other funds like general fund surplus dollars that would yet be available for appropriation during the next regular session, while explicitly acknowledging that the full legislature has never appropriated the funds.
>
> Procedurally, to the extent that the Legislative Budget & Audit Committee (LB&A) is given an oversight role over the governor's RPL submissions—this too is an unconstitutional delegation of authority. LB&A may not stand in place of the full legislature, but under current law, LB&A can approve the RPL spending to occur in less than 45 days after submission. Moreover, the law allows the governor to spend the funds unilaterally after 45 days, regardless of whether LB&A ever takes up the matter in committee or even if it actually disapproves it—so long as in the governor's sole discretion, the governor "determines to authorize the expenditure." I believe this process violates the

constitution by its express provisions as well as in separation of powers and checks and balances principles.

SB 221 rectifies these defects while still enabling a mechanism for spending federal dollars when the legislature is not meeting in session. The bill eliminates the governor's ability to use the RPL process for revenue generated from sources that are not federal. It provides a process that empowers the legislature to appropriate the federal funds by establishing increased amounts in an enacted appropriations bill to be spent on budget items when federal revenue exceeds State forecasts, but only when the legislature has specifically identified those items and set permissible increase limits. The limits may be provided for by percent increases, which would allow the legislature to thoughtfully consider the amounts of potential increases to budget items relative to their base appropriations and to one another.

Under SB 221, the governor may submit RPLs to LB&A for confirmation that spending proposals are maintained within budget items and limits restricted by the legislature in an enacted appropriations bill. LB&A may also make other recommendations for the spending. Finally, under SB 221, the governor may not spend the funds until 45 days have elapsed from the date of the LB&A confirmation, unless LB&A recommends the expenditures are made earlier.

Concerns over the constitutionality of the RPL process notably arose in 2020 when the legislature recessed the regular session due to the Covid-19 pandemic, and the State received large sums of federal dollars that could be spent to address the public health disaster. In particular, the State was given $1.25 billion in Coronavirus Relief Funds that could be expended in a relatively discretionary manner, on "necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19)." The governor purportedly exercised his authority under the current RPL process, including attempting to expend: $569 million for direct municipal relief, and $290 million for small business grants, but only $10 million on relief to individual

Alaskans to prevent homelessness. A Juneau resident sued the State, arguing the governor's spending was unconstitutional. The lawsuit prompted the legislature to return to the Capitol to "ratify" the governor's RPL expenditures before the final day of the regular session. The superior court decided the ratification remedied any failure to appropriate the funds. The ruling was not appealed, so there is no final precedent on the issue.

There are only two types of bills contemplated by the Alaska Constitution: (1) substantive bills, like those establishing or changing laws, and (2) bills for appropriations. Because no appropriation bill was passed addressing the governor's RPL spending, to this day I contend that the governor's unconstitutional act could not simply be "ratified."

We should avoid a repeat of what happened with RPL spending in 2020. Please join me in fixing the defective RPL process and ensuring the legislature retains its control over its discretionary appropriations authority as mandated by the Alaska Constitution.

CHAIR SHOWER found no questions and asked Ms. Kawasaki to proceed with the sectional analysis.

4:47:35 PM
MS. KAWASAKI provided the sectional analysis for SB 221, version I. It read as follows:

Section 1 – Governor May Call Special Session in Less than 30 Days

Section 1 provides an express exception to allow the governor to call a special session in less than 30 days to address appropriations of additional federal receipts in excess of those accounted for under the amendments of this legislation.

Section 2 – Amending the RPL Process

Section 2 amends the revised program legislative (RPL) process to provide that, for the State to expend additional funds it receives above the appropriations made in an appropriation bill, the funds may only be

federal funds and may only be spent in accordance with the following procedure:

In an appropriation bill, the legislature may provide for an amount that is a specific maximum increase of an appropriation item above the amount actually appropriated by the appropriation bill; the specific maximum increase may be provided as a percentage of an appropriation item, and

(1) The governor may submit a proposal for spending the additional federal funds via a "revised program" to the Legislative Budget and Audit Committee for review;

(2) The Legislative Budget and Audit Committee reviews the governor's revised program proposal and may recommend alternative funding amounts or distributions among multiple items, not to exceed any specific maximum increases previously provided by an appropriation bill;

(3) The governor may submit a corrected or changed revised program proposal to the Legislative Budget and Audit Committee for review;

(4) Once the governor submits a final revised program proposal, the Legislative Budget and Audit Committee confirms the proposal does not exceed any specific maximum increases previously provided by an appropriation bill; and

(5) Revised program amounts confirmed by the Legislative Budget and Audit Committee may be expended after 45 days, unless the committee recommends an earlier date of the expenditures.

4:49:49 PM

Section 3 - Calling a Special Session to Spend Amounts Above Permissible RPL Subjects

To expend amounts exceeding those permissible under the RPL process, including applying funds to other items not previously addressed with a specific maximum increase in an appropriation bill, the governor must call a special session.

Section 4 - Limiting Applicability of the Effective Date of the Bill

This section establishes that the new RPL process would not apply to items funded under the previous RPL provisions as they read and were applicable before the effective date of the act.

CHAIR SHOWER asked if she had any comment on the fiscal note.

MS. KAWASAKI replied the bill doesn't have a fiscal note.

4:50:43 PM
SENATOR REINBOLD offered her view of special sessions in Juneau and posed the possibility of an amendment.

CHAIR SHOWER asked the sponsor if he had any comments.

SENATOR WIELECHOWSKI replied he had no comment.

4:51:25 PM
CHAIR SHOWER asked if he had seen the governor's bill SB 241, "An Act making appropriations for the operating expenses of state government and certain programs; making capital appropriations and supplemental appropriations; capitalizing funds; and providing for an effective date."

CHAIR SHOWER said none of the senators he'd asked had seen the bill and it's an example of legislators not having a chance to look at where the money goes even though it's important to be able to offer that kind of input. The amount of money is almost irrelevant, he said. It's the process that's important and it should follow the constitution. He expressed frustration at being cut out of the loop even inside the legislative branch. He continued to comment:

> This is after the subcommittee process, by the way, it's all closed out and now here we go and we're going to hand almost a billion dollars to the Senate Finance co-chairs to come up with a plan, and the governor, and I'm going 'Where are we in the process?'

He expressed appreciation for SB 221. He emphasized that the constitution should be followed, the statute should be changed so it's correct, and every legislator should have a chance to have input.

4:54:13 PM
SENATOR COSTELLO stated that it is fundamentally wrong to hand off the constitutional power of the legislature to a single committee when the legislature is not in session. She expressed appreciation for SB 221 and posited that it will resolve much of the conflict with the RPL process.

4:55:10 PM
SENATOR WIELECHOWSKI commented that it is even more shocking that even the committee that the legislature defers its power to during the interim doesn't have the ability to stop the governor.

SENATOR COSTELLO said the sponsor statement does a good job of outlining that point. The balance of power is important and the current process undermines the power of the legislature. She said she has no problem with the legislature returning to address such issues.

CHAIR SHOWER mentioned the possibility of amending the bill to address what he has experienced in the RPL process. He reiterated that an important part of the process is to give individual legislators an opportunity to give input and talk about the needs in their districts. It should not fall to just the governor or a handful of legislators.

SENATOR REINBOLD emphasized that the current RPL process is entirely unacceptable.

4:57:38 PM
SENATOR WIELECHOWSKI said he was pleased to see so much interest in the bill but suggested that while the committee was interested in other areas, SB 221 deals solely with RPLs and the process. Adding more may make its progress through this and the other body more difficult.

4:58:45 PM
CHAIR SHOWER opened public testimony on SB 221, finding none he closed public testimony.

CHAIR SHOWER held SB 212 in committee.

4:59:29 PM
There being no further business to come before the committee, he adjourned the Senate State Affairs Standing Committee meeting at 4:59 p.m.